

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NITA S. VELA, CHRISTIE L. VELA, a
minor, by and through RUDOLFO R.
VELA, her father and next friend,
ANDREA LASSEN, a minor, by and
through JACK G. LASSEN, her father
and next friend, and KATHRYN ANDERSON,
a minor, by and through ROY ANDERSON,
her father and next friend,

Appellants,

vs.

GOVERNMENT EMPLOYEES INSURANCE COMPANY
c/o GUAM INSURANCE ADJUSTERS,

Appellee.

On Appeal from the District Court of Guam

APPELLEE'S BRIEF

E. S. TERLAGE
SEDGWICK, DETERT, MORAN & ARNOLD
ANDREW J. COLLINS
DONALD W. MALOUF
111 Pine Street
San Francisco, California 94111

Attorneys for Appellee.

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No. 21758
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On Appeal from the District Court of Guam

APPELLEE'S BRIEF

PRELIMINARY STATEMENT

"This appeal presents the question of whether in the territory of Guam, a claim which arises from the negligent operation of a motor vehicle and which is permanently abated as against the tortfeasor because of his death may be successfully prosecuted against his automobile insurer under a Guamanian statute permitting such insurer to be sued directly. Capital Insurance and Surety Company v. Kelley (9th Cir. 1966) 361 F. 2d 567, 568.

STATEMENT OF CASE AND FACTS

The appellant, Nita S. Vela, was driving a car owned by her husband and herself on January 2, 1966, when it was involved in an accident with a car driven by Charles L. Hofer who was killed in the accident. Appellant, Nita Vela, was

1 seriously injured and , of her eight passengers, seven, in-
2 cluding the other appellants, Christie L. Vela, Andrea Lassen
3 and Kathryn Anderson, were also injured. The accident took
4 place on a public highway of the Territory of Guam, near the
5 entrance of the Naval Communications Station.

6 On March 22, 1966, a complaint was filed against
7 defendant and appellee Government Employees Insurance Com-
8 pany which insured both the Hofer and Vela automobiles, pur-
9 suant to Section 43354 of the Government Code of Guam which
10 provides for direct action against the insurer of the tort-
11 feator "within the terms and limits of the policy." The
12 complaint specifically charged appellee Government Employees
13 Insurance Company with liability under the terms of its
14 policy No. 216-27-25, issued to Charles L. Hofer and effec-
15 tive on August 12, 1965.

6
7 On December 5, 1966, an Order for Summary Judgment
8 was granted by Judge Paul D. Shriver in the District Court
9 of Guam. The summary judgment released Government Employees
0 Insurance Company "as to any claims of plaintiffs herein
1 involving Government Employees Insurance Company Policy No.
2 216-27-25 issued to Charles L. Hofer, defendant company's
3 insured, which said policy was effective as of August 12,
4 1965."

5 It was further "ordered, adjudged and decreed that
6 this cause of action be dismissed without prejudice as to

1 the rights of plaintiffs herein to claim under any other
2 policy issued by the defendant Government Employees Insurance
3 Company;. . ."

4 On December 19, 1966, a notice of appeal to this Court
5 was filed in this cause.

6 STATEMENT OF QUESTION PRESENTED

7 1. Did the United States District Court of Guam pro-
8 perly grant a summary judgment in the above titled cause?

9 2. Did the United States District Court of Guam pro-
10 perly apply the provisions of Government Code of Guam, section
11 43354?

12 ARGUMENT

13 I. THE TRIAL COURT PROPERLY EXERCISED ITS POWER TO
14 GRANT SUMMARY JUDGMENT IN THIS INSTANCE SINCE THE
15 CASE PRESENTED NO ISSUE OF FACT.

16 Rohner v. Union Pac. R. Co. (CA Colo. 1955) 225 F. 2d
17 272, 274, held that "the intended purpose of this summary
18 judgment provision is to enable the trial court to readily
19 dispose of cases on matters of law where it becomes evident
20 no factual controversy of fact remains." Further, in Byrnes
21 v. Mutual Life Insurance Company of New York (CA Ariz. 1955)
22 217 F. 2d 497, 500, certiorari denied 75 S.C. 532, 348 U.S.
23 971, 99 L. Ed. 756, the court stated that "the object of
24 procedure for summary judgment is not to determine an issue,
25 but to determine whether there is an issue to be tried."
26 Also in Schreffer v. Bowles (10th Cir. 1946) 153 F. 2d 1, 3,

1 the court stated that "the statutory purpose of rule 56 is
2 to permit speedy and expeditious disposal of cases where the
3 pleadings do not as a matter of fact present any substantial
4 fact for determination." Also see, General Beverages, Inv.
5 v. Rogers (10th Cir. 1954) 216 F. 2d 413.

6 Appellant argues that the court erred in granting the
7 motion for summary judgment in that there existed in the
8 "file" a copy of appellant's insurance policy taken out through
9 appellee, Government Employees Insurance Company. This posi-
0 tion is not understandable. Appellant merely states that
1 since appellee insured both cars, by amendment appellants
2 Andrea Lassen and Kathryn Anderson could also state a cause
3 of action against appellee. The only interpretation to this
4 sentence which could justifiably be construed to give appel-
5 lants a cause of action would be that the amendment refers
6 to the policy insuring appellant Nita Vela's car. This
7 argument has no merit.

8 Referring to the order granting motion for summary
9 judgment, the court states:

0 "It is further ordered, adjudged and decreed
1 that this cause of action be dismissed with-
2 out prejudice as to the rights of plaintiffs
3 herein to claim under any other policy issued
4 by the defendant Government Employees Insur-
5 ance Company; and it is further ordered that
6 plaintiffs recover nothing by this suit and
7 the defendant Government Employees Insurance
8 Company have its costs."
9 (Emphasis added.)

0 Even if appellants could recover under Nita Vela's

1 policy, which is not admitted, appellant is limited to the
2 cause of action stated.

3 The case of Superior Manufacturing Corp. v. Hessler,
4 (CA Colo. 1959) 267 F. 2d 302, certiorari denied 80 S.C. 139,
5 361 U.S. 876, 4 L.Ed. 2d 114, states:

6 "An amended pleading is one which clarifies
7 or amplifies a cause of action which can be
8 identified with certainty as the same cause
9 of action initially pleaded or attempted to
be pleaded, and it is a perfection of an
original pleading rather than the establish-
ment of a new cause of action."

10 Appellant should not be allowed to amend his complaint
11 to state a cause of action against appellee under a new
12 policy involving a different insured and involving different
13 issues of fact.

14 In paragraph III of their complaint, appellants allege:

15 "That upon information and belief, on the 2nd
16 day of January, 1966, the defendant, Govern-
17 ment Employees Insurance Company, had in full
18 force and effect, a policy of insurance issued
19 to deceased, Charles L. Hofer, insuring said
20 vehicle against loss on account of personal
21 injury or property damage caused by negligence,
neglect or want of care of said insured. That
under the provisions of Section 43354 of the
Government Code of Guam, plaintiffs have a
right of direct action against the defendant,
Government Employees Insurance Company, with-
in the scope and coverage of said policy."

22 Nowhere within the complaint is it stated that appellee,
23 Government Employees Insurance Company, even insured the
24 vehicle owned by Nita S. Vela nor is a cause of action stated
25 against appellee under such policy.

26 Even if the court were to determine that an issue of

fact remains concerning recovery under the policy covering Mrs. Vela's automobile, which issue is improbable in view of the guest statute in the Vehicle Code of Guam, the court was justified in granting the motion for summary judgment so far as it dismisses the action against Government Employees Insurance Company under its policy No. 216-27-25 issued to Charles L. Hofer only. Since that is the only policy referred to in the pleadings, the court properly granted the motion without prejudice to appellants' rights to sue appellee on any other policy issued by it.

"The object of a motion for summary judgment is to separate what is formal or pretended in denial or averment from what is genuine and substantial so that only the latter may subject a suitor to bear the burden of trial." Richard v. Credit Suisse (1926) 242 NY 346, 152 N.E. 110, 111, 45 A.L.R. 1041. Reed Research Inc. v. Schumer Company (CA 1957) 243 F. 2d 602. 605.

II. THE TRIAL COURT PROPERLY APPLIED THE PROVISIONS OF SECTION 433354 OF THE GOVERNMENT CODE OF GUAM IN THIS INSTANCE.

A. Appellant's brief is misdirected to the real issues in this case.

Appellant spends two pages of his brief noting that when a statute has been copied from another jurisdiction in the absence of specific statutory exception, the interpretation and construction of the court of last resort in the state from which the statute is copied is controlling, and the statute incorporates the prior case law of the other state.

1 Having conclusively proved his point, he then argues
2 that the District Court of Guam should be reversed without
3 having related his argument to anything which the Court
4 apparently did wrong. Where has appellant in point 2 of his
5 argument stated that the court failed to apply the case law
6 of Louisiana to the facts of this case?

7 It appears that the aforementioned argument must be
8 held in abeyance until finally resolved in point 3 of the
9 appellant's brief. It is, therefore, appellee's intention
10 to incorporate point 3 into point 2 and thereby organize a
11 coherent answer to the argument.

12 B. The Territory of Guam has no survival statute.

13 In footnote No. 1 of this court's opinion in Capital
14 Insurance and Surety Company v. Kelley, supra, this court
15 relates the history of the Guam law concerning survival of
16 claims upon the death of a tortfeasor and shows that claims
17 of the type we are dealing with here do not survive the death
18 of a tortfeasor.

19 C. Upon a close analysis of the relevant code,
20 provisions and case law from this court, one
21 must conclude the trial court has acted
22 properly.

23 Section 43354 of the Government Code of Guam, which
24 appellant alleges was misapplied and misconstrued, states:

25 "On any policy of liability insurance, the
26 insured person or his heirs or representa-
tives shall have a right of direct action

1 against the insurer within the terms and
2 limits of the policy. . ."
3 (Emphasis added).

4 The terms and limits of the policy in the instant
5 case are that appellee agrees "to pay on behalf of the in-
6 insured all sums which the insured shall become legally obliga-
7 ted to pay as damages. . ." As such, coverage is identical
8 to the policy in Capital Insurance and Surety Company v.
9 Kelley, supra, decided on May 18, 1966 by the Ninth Circuit
0 Court of Appeals on an appeal from a decision of the Federal
1 District Court of Guam. That case presented the identical
2 question we have here and is controlling.

3 In that case, a head-on collision resulted in death
4 to the defendant's insured. In arguing that Section 43354
5 of the Government Code of Guam provided for liability in-
6 spite of the fact that the action was abated as to the in-
7 sured and his estate, plaintiff-appellee attempted to show
8 that one section of Guam's Financial Responsibility Law in-
9 tended to make the insurer continue to be liable under the
0 policy inspite of the fact that the insured had died. In
1 reversing the trial court, this court held:

2 "It is not our function, in a case such as
3 this, to establish a policy which is claimed
4 to be in the interest of the people of Guam.
5 The policy, good or bad, is already fixed
6 by the action or inaction of the legislative
7 bodies properly empowered to enact measures
8 reflecting the will of their constituancies.
9 Here, the legislature has decreed that a
0 victim ' . . shall have a right of direct
1 action against the insurer within the terms
2 and limits of the policy. . .' The insurance

1 contract under consideration provided that
2 the appellant would indemnify the insured
3 for all sums which he shall become legally
4 obligated to pay as damage because of
5 bodily injury, including death at any time
6 resulting therefrom. . ."
7 (Emphasis added).

8 On page 10 of their brief, appellants cite Lumbermen's
9 Mutual Casualty Company v. Elbert, 348 U.S. 48, 99 L.Ed. 59,
10 75 S.C. 151. It is interesting to note that in the quoted
11 part of the opinion and appearing on page 11 of their brief,
12 the following language is used:

13 "While either type of action encompasses
14 proof of the tortfeasor's negligence, in
15 the separate suit against the insurer
16 plaintiff must also establish liability
17 under the policy."

18 Appellants refer to the unreported opinion of Kelley
19 v. Capital Insurance and Surety Company, Civil Case No. 6-65,
20 District Court of Guam, which was overruled by this court.
21 They cite the case of Davies v. Consolidated Underwriters,
22 6 So. 2d 351 (S.C. Louisiana 1942) in which the court held
23 that an insurer may not avail himself of the defense of
24 bankruptcy of his insured and, therefore, by implication,
25 that a direct action statute creates a cause of action against
26 the insurer which is separate and independent from the cause
27 of action against the insured insofar as defenses which are
28 personal to the insured may not be raised by the insurer.
29 To the same effect are the cases of McHenry v. American
30 Employees Insurance Company (1944) 18 So. 2d 656; Rome v.
31 Lancashire Indemnity Company of America, 169 So. 132.

1 The McHenry action involved a suit brought by the
2 husband against the wife's employer's insurance company in
3 an action where the husband was injured due to the wife's
4 negligence in driving her employer's car within the scope of
5 her employment. The court there held that the insurer could
6 not raise any personal defenses which the wife might have
7 been able to raise to defeat recovery by the husband. The
8 Rome case involved an action for wrongful death against the
9 insurer of a municipal corporation. There, the insurer was
0 not allowed to take advantage of the defense of governmental
1 immunity which was held personal to the insured. In that
2 case, there is a well-reasoned and strong dissent by Justice
3 Janvier.

4 These three cases cited by appellants are distinguish-
5 able in that all involve personal defenses releasing the in-
6 sureds from liability under a cause of action which, but for
7 the defenses, would be absolute. In the instant case, the
8 action itself abated. It is clear that abatement of an
9 action because of death of a party is not a personal defense
0 but rather is a statement of public policy designed to pre-
1 vent fraudulent claims against a deceased person's estate.
2 The policy behind this was well-reasoned in this court's
3 opinion of Capital Insurance and Surety Company v. Kelley,
4 supra:

5 "There was a strongly valid reason for Guam's
6 action in authorizing a direct proceeding
7 against the insurer of an automobile operating

1 upon Guam's roadways. It is well known
2 that the population of the territory,
3 military personnel and others has been
4 unusually transient in its nature. Ob-
5 viously, it was believed that an insurer
6 of an automobile should not escape a just
7 obligation because of the removal of its
8 insured from the territory and the conse-
9 quent difficulty of or impossibility of
10 subjecting the insured himself to the
11 jurisdiction, impersona, of the courts of
12 Guam. It is hardly to be questioned, how-
13 ever, that the legislature contemplated
14 that an insurer sued in a direct action
15 might encounter no insurmountable obstacle
16 in presenting its insured's testimony either
17 in deposition form or by production of the
18 witness personally.

19 "In analyzing the case at hand, different
20 considerations of policy are apparent. An
21 alleged tortfeasor who is deceased may have
22 been the only witness to events which might
23 fairly exculpate him from legal responsibility.
24 The rule that a tort action against him abates
25 with his death was predicated upon the belief
26 that public policy would be best served by
27 avoiding the possibility that heirs suffer
28 injustice because his death foreclosed the
29 opportunity for successful defense."

30 Again referring to this court's opinion in Capital
31 Insurance and Surety Company v. Kelley, supra, this court
32 considered the Louisiana cases cited by appellant, found
33 the interpretations somewhat uncertain so far as the issue
34 in the present case is concerned, and chose to rest its
35 decision on other well-reasoned authorities.

36 The Court of Appeals for the Fifth Circuit in Degelos
37 v. Fidelity and Casualty Company, 313 F. 2d 809 (1963),
38 interpreted the Louisiana statute as meaning:

39 "Under the direct action statute, the case

1 may proceed against the insurer, that
2 liability depends on legal liability of
3 the insured. Whether, as the act permits,
4 the insured is joined with the insurer, the
5 standard for recovery is identical."
6 313 F. 2d at 815.

7 Therefore, in view of the cases cited above, and
8 particularly the decision of this court in the case of
9 Capital Insurance and Surety Company v. Kelley, supra, which
10 presented identical issues to the court, it is apparent
11 that the District Court of Guam properly granted the motion
12 for summary judgment.

13 CONCLUSION

14 In the complaint to this cause, appellants referred
15 solely to insurance policy No. 216-27-25 issued to Charles L.
16 Hofer and effective on August 12, 1965. It is clear that,
17 based on the recent decision of this court in Capital Insur-
18 ance and Surety Company v. Kelley, supra, which properly
19 construed Section 43354 of the Government Code of Guam to
20 provide for direct action against an insurer in accordance
21 with the terms and limits of the policy of insurance; to-wit:
22 only providing for indemnity to the insured for such losses
23 as he may become legally obligated to pay as damages and,
24 in view of the law of Guam by which no action in tort sur-
25 vives the death of the alleged tortfeasor, the District
26 Court of Guam correctly granted the motion for summary
judgment and dismissed this action. Therefore, the court's
judgment should be affirmed.

1 Dated, San Francisco, California,

2 October 27, 1967.

3 Respectfully submitted,

4 E. S. TERLAGE

5 SEDGWICK, DETERT, MORAN & ARNOLD

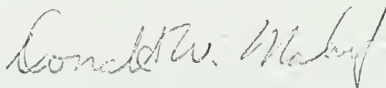
6 ANDREW J. COLLINS

7 DONALD W. MALOUF

8 Attorneys for Appellee

9
10
11 CERTIFICATE

12 I certify that in connection with the preparation of
13 this brief, I have examined Rules 18, 19 and 39 of the
14 United States Court of Appeals for the Ninth Circuit, and
15 that, in my opinion, the foregoing brief is in full compli-
16 ance with those rules.

17 

18 DONALD W. MALOUF

19 Attorney for Appellee

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APPELLEE'S BRIEF FOR THE PURPOSE OF CLARIFYING
THE APPLICABILITY OF GUAM PUBLIC LAW NO. 8-115

E. S. TERLAGE,
SEDGWICK, DETERT, MORAN & ARNOLD
ANDREW J. COLLINS
DONALD W. MALOUF
111 Pine Street
San Francisco, California 94111

Attorneys for Appellee.

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APPELLANTS' POSITION

Appellants argue that Section 956 of the Civil Code of Guam must be given retroactive effect and must, therefore, apply to the accident which forms the basis of this claim.

If such were the case, then, under the Direct Action Statute embodied in Section 43354 of the Government Code of Guam, plaintiff appellants would have a direct right of action against the carrier of the deceased, whose act allegedly was the cause of the injuries sustained.

The basis of appellants' contention is that prior to the passage of Civil Code Section 956 there was no statute in Guam providing for the abatement of a cause of action at the death of the wrong-doer. Further, appellants contend tha

any such rule of abatement is derived from the British Common Law which has never been enforced in Guam.

ARGUMENT

Appellants are mistaken in their interpretation of Guam Law.

The history of the law of Guam, from the time it came under the influence of the United States, is well set forth in the case of United States v. Johnson, (1950) 181 F. 2d 577. There, the plaintiff sued the United States under a theory of respondeat superior for injuries sustained while riding in a truck owned by the United States Navy and driven by a member of the Armed Forces. The court there stated that the island was acquired by the United States under the terms of a treaty following the Spanish-American War, and it was placed under the control of the Navy and of the Secretary of the Navy. By executive order of the Naval Government of Guam the Guam Codes were promulgated on December 28, 1933. These Codes were copied from the Codes of California. The court continued:

"When the appropriate authority adopted from California a code of laws designed to replace the original part Spanish law, it might be inferred that such codified rules as that of respondeat superior were intended to have the same significance and scope as they had been given by the Supreme Court of the State from which the Code was taken."
(emphasis added)

Section 377 of the Code of Civil Procedure of Guam was enacted in 1933 as part of the original Codes of Guam.

1 That section provides as follows:

2 "When the death of a person not being a minor
3 is caused by the wrongful act or neglect of
4 another, his heirs or personal representatives
5 may maintain an action for damages against the
6 person causing the death, or if such person be
7 employed by another person who is responsible
8 for his conduct then also against such other
9 person..." (emphasis added)

10 In the preliminary provisions of the Code of Civil
11 Procedure of Guam, Section 18 provides:

12 "No law, or rule is continued in force
13 because it is consistent with the provisions
14 of this code on the same subject; but in all
15 cases provided for by this code, all laws,
16 and rules heretofore enforced in this island,
17 whether consistent or not with the provisions
18 of this code, unless expressly continued in
19 force by it, are repealed and abrogated.
20 This repeal or abrogation does not revive
21 any former law heretofore repealed, nor does
22 it affect any right already existing or
23 accrued..."

24 By this it is clear that the Guam legislature intended the
25 provisions of the Code to be controlling and to replace all
26 prior law within its scope. This is further augmented by
27 Section 4 of the Preliminary Provisions of the Code of Civil
28 Procedure of Guam whereby it is expressly provided that:

29 "This code establishes the law of this
30 Island respecting the subjects to which
31 it relates..."

32 Since, therefore, Code of Civil Procedure Section 377
33 became the law of Guam in 1933 and continued in effect until
34 the passage of Civil Code Section 956 in 1966, it is clear
35 that it is controlling on the issues here before the court in
36 the issues fall within its scope.

1 The provisions of Code of Civil Procedure
2 Section 377 are applicable to the facts of
3 this case.

4 In Footnote 1 to this court's opinion in Capital
5 Insurance & Surety Co., Inc. v. Kelly, (1966) 361 F. 2d 567,
6 this court noted:

7 "In its written opinion, the District Court observed:
8 'The Guam Codes were originally adopted from California
9 in 1933, at which time the California courts held
10 that torts of this kind did not survive the death
11 of the tortfeasor. When Guam took the California
12 Codes it took the construction placed upon such
13 Codes by the California courts, United States v.
14 Johnson, 181 F. 2d 577. McLellan v. Automobile
15 Ins. Co. of Hartford, Conn., 80 F. 2d 344 (9th
16 Cir. 1935), was a case which arose in Arizona but
17 so many California cases are cited as to make it
18 abundantly clear that survival did not exist.
19 The plaintiffs herein do not contend to the
20 contrary.'"

21 The District Court continued, as further cited in
22 footnote 1 above, that in 1946 the California court, in
23 Hunt v. Autier, 28 C. 2d 288, 169 P. 2d 913, determined that
24 a claim for property damage did not abate with the death of
25 the tortfeasor. This was widely criticized as a usurpation
26 of the legislative function. Finally, in 1949, California
27 passed Civil Code Section 956 to the effect that the death
28 of the tortfeasor did not cause the action to be abated.

29 Although not cited in its decision, the crucial
30 California case on the question at issue is Clark v. Goodwin,
31 (1915) 170 Cal. 527, 150 P. 357, 358, LRA 1916A, 1142. That
32 court held:

33 "The authorities are uniform in supporting
34 the conclusion we have reached, that under

1 statutes as ours the cause of action for
2 damages for the death of her husband, given
3 plaintiff by Section 377 of the Code of Civil
4 Procedure, abated with the death of the alleged
wrongdoer prior to the action brought, and
that such action cannot be maintained against
his personal representative." (id at 531)

5 Although couched in terms of falling back onto the
6 common law since the statute did not create a new right,
7 nonetheless, the interpretation of that statute as given by
8 the court in Clark v. Goodwin, supra, is to the effect that
9 there was no right to sue the representative of the deceased.
10 It is that interpretation which the legislature of Guam
11 adopted with the passage of its own Section 377 as borrowed
12 from California.

13 Furthermore, this court has determined the issue in its
14 opinions in United States v. Johnson, supra, and Capital
15 Insurance & Surety Co., Inc., v. Kelly, supra, where the
16 court stated, at page 570:

17 "The rule that a tort action against him abates
18 with his death was predicated upon the belief
19 that public policy would best be served by
avoiding the possibility that heirs suffer
injustice because death foreclosed the
opportunity for successful defense."

20 Section 377 of the Code of Civil Procedure was given a
21 dual significance in California by the holding in Clark v.
22 Goodwin, supra. On the one hand it enabled heirs to sue for
23 damages for the death of a decedent, and on the other hand it
24 provided that such action must be brought against the person
25 causing the death. Those latter words were construed as
26 clearly indicating an intention not to allow an action to

1 to be brought against the representatives of the deceased
2 tort feasor.

3 By accepting the interpretation of the California
4 courts, Guam also accepted the common law rule about abate-
5 ment of actions on the death of the tort feasor. To hold
6 otherwise would be tantamount to a declaration by the Guam
7 legislature of intent to borrow an entire statute, complete
8 with wording which has been clearly and precisely inter-
9 preted, while rejecting that interpretation. It is
10 inconceivable that the legislature could have so intended
11 when they could as just as easily reworded the statute to
12 read that the action could be brought against the person or
13 his heirs or representatives.

14 It is, therefore, submitted that the rule of law in
15 Guam prior to 1966 was that an action abated upon the death
16 of the tort feasor.

17 Public Law 8-115 is not retroactive.

18
19 Appellants concede that Civil Code Section 956 was
20 borrowed from California Civil Code Section 956. As such, it
21 is also borrowed subject to the interpretation given it by
22 the California courts.

23 In Cort v. Steen, (1950) 36 C. 2d 437, a case cited by
24 appellants, an action in negligence was brought by a passenger
25 in the decedent's automobile after the driver had died. The
26 court stated that prior to 1949 there was no provision under

1 the law of this state for the survival of actions to recover
2 for personal injury. The question of the new statute's
3 retroactivity was determined as follows:

4 "Courts have treated the phrase 'actio personalis
5 moritur cum persona' as referring not merely to
6 the remedy, but to the right or cause of action
7 itself...Under the doctrine the abatement of the
8 action by the death of the injured person through
9 the tort feisor's act or otherwise, or by the
10 death of the tort feisor, was deemed to abate
11 the wrong as well...[thus] a survival statute
12 was deemed to create a right or cause of action
13 rather than to continue an existing right or
14 revive or extend a remedy theretofore accrued for
15 the redress of an existing wrong."

16
17 It is clear, therefore, that since the California
18 interpretation of the new section is binding upon the Guam
19 court, the effect of this section is not retroactive and may
20 not be used to give the plaintiffs a cause of action which
21 they did not have at the time of the accident.

22 CONCLUSION

23 It is submitted that Public Law 8-115, which added
24 Section 956 to the Civil Code of Guam, is not applicable to
25 the action before the court since it was not passed until
26 three months after the accident which is the subject of this
lawsuit.

Dated, San Francisco, California,

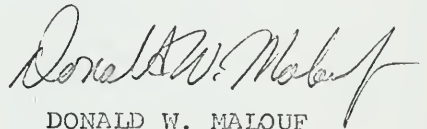
April 5, 1968.

Respectfully submitted,
E.S. TERLAGE
SEDGWICK, DETERT, MORAN & ARNOLD
ANDREW J. COLLINS
DONALD W. MALOUF

-7- Attorneys for Appellee

1
2 CERTIFICATE
3

4 I certify that in connection with the preparation of
5 this brief, I have examined Rules 18, 19 and 39 of the
6 United States Court of Appeals for the Ninth Circuit, and
7 that, in my opinion, the foregoing brief is in full
8 compliance with those rules.
9

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DONALD W. MALOUF

11 Attorney for Appellee
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